

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 59th Legislature (2024)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 3304

By: Bennett of the House

and

Coleman of the Senate

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10 COMMITTEE SUBSTITUTE

11 An Act relating to insurance; amending 36 O.S. 2021,
12 Section 123, which relates to delivery and storage of
13 electronic documents; providing definitions;
14 modifying definition; permitting plan sponsor of a
15 health benefit plan to take certain actions on behalf
16 of certain covered persons; requiring certain actions
17 by plan sponsor; requiring certain actions by the
18 insurer for the health benefit plan; requiring
19 insurer to apprise certain parties of significance of
20 certain notice or documents; and providing an
21 effective date.

22 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

23 SECTION 1. AMENDATORY 36 O.S. 2021, Section 123, is
24 amended to read as follows:

 Section 123. A. In this section, the following words shall
have the following meanings:

1. "Delivered by electronic means" includes:

- 1 a. delivery to an electronic mail address at which a
2 party has consented to receive notices or documents,
3 or
4 b. posting on an electronic network or site accessible
5 via the Internet, mobile application, computer, mobile
6 device, tablet or any other electronic device,
7 together with separate notice of the posting which
8 shall be provided by electronic mail to the address at
9 which the party has consented to receive notice, or by
10 any other delivery method that has been consented to
11 by the party.

12 2. "Health benefit plan" means a policy, contract, certificate,
13 or agreement entered into, offered by, or issued by an insurer to
14 provide, deliver, arrange for, pay for, or reimburse any of the
15 costs of healthcare services, including a vision or dental benefit
16 plan and a self-insured plan as permitted under the Employee
17 Retirement Income Security Act of 1974.

18 3. "Party" means any recipient of any notice or document
19 required as part of an insurance transaction, including but not
20 limited to an applicant, an insured, a policyholder, a covered
21 person, or an annuity contract holder.

22 4. "Plan sponsor" means a person, other than a regulated
23 entity, who establishes, adopts, or maintains a health benefit plan
24 that covers residents of this state, including a plan established,

1 adopted, or maintained by an employer or jointly by an employer and
2 one or more employee organizations, an association, a committee, a
3 joint board of trustees, or any similar group of representatives who
4 establish, adopt, or maintain a plan.

5 B. Subject to the requirements of this section, any notice to a
6 party or any other document required under applicable law in an
7 insurance transaction, or that is to serve as evidence of insurance
8 coverage, may be delivered, stored and presented by electronic
9 means, so long as it meets the requirements of the Uniform
10 Electronic Transactions Act pursuant to Section 15-101, et seq. of
11 Title 12A of the Oklahoma Statutes.

12 C. Delivery of a notice or document in accordance with this
13 section shall be considered equivalent to any delivery method
14 required under applicable law, including delivery by first class
15 mail; first class mail, postage prepaid; certified mail; certificate
16 of mail; or certificate of mailing.

17 D. A notice or document may be delivered by electronic means by
18 an insurer to a party under this section if:

19 1. The party has affirmatively consented to that method of
20 delivery and has not withdrawn the consent; or

21 2. The party, before giving consent, is provided with a clear
22 and conspicuous statement informing the party of:

23 a. the right of the party to withdraw consent to have a
24 notice or document delivered by electronic means, at

- 1 any time, and any conditions or consequences imposed
2 in the event consent is withdrawn,
- 3 b. the types of notices and documents to which the
4 party's consent would apply,
- 5 c. the right of a party to have a notice or document
6 delivered in paper form, and
- 7 d. the procedures a party must follow to withdraw consent
8 to have a notice or document delivered by electronic
9 means and to update the party's electronic mail
10 address;

11 3. The party:

- 12 a. before giving consent, is provided with a statement of
13 the hardware and software requirements for access to
14 and retention of a notice or document delivered by
15 electronic means, and
- 16 b. consents electronically, or confirms consent
17 electronically, in a manner that reasonably
18 demonstrates that the party can access information in
19 the electronic form that will be used for notices or
20 documents delivered by electronic means as to which
21 the party has given consent;

22 4. The insurer takes measures reasonably calculated to ensure
23 that delivery by electronic means results in receipt of the notice
24 or document by the party; and

1 5. After consent of the party is given, the insurer, in the
2 event a change in the hardware or software requirements needed to
3 access or retain a notice or document delivered by electronic means
4 creates a material risk that the party will not be able to access or
5 retain a subsequent notice or document to which the consent applies:

6 a. provides the party with a statement that describes:

7 (1) the revised hardware and software requirements

8 for access to and retention of a notice or

9 document delivered by electronic means, and

10 (2) the right of the party to withdraw consent

11 without the imposition of any condition or

12 consequence that was not disclosed at the time of

13 initial consent, and

14 b. complies with paragraph 2 of this subsection.

15 E. 1. The plan sponsor of a health benefit plan may, on behalf
16 of covered persons enrolled in the plan, provide the consent to the
17 mailing of all communications related to the plan by electronic
18 means otherwise required by paragraphs 1 and 2 of subsection D of
19 this section.

20 2. Before consenting on behalf of a covered person, a plan
21 sponsor must:

22 a. confirm that the covered person routinely uses

23 electronic communications during the normal course of

24 employment and is able to access and retain electronic

1 communications that may be delivered by the insurer,
2 and

3 b. inform the party that such consent will be provided,
4 and that notices and documents related to the plan may
5 be delivered to the party's work electronic mail
6 address unless the party affirmatively opts out of
7 delivery by electronic means or provides an
8 alternative electronic mail address.

9 3. Before providing delivery of a notice or document by
10 electronic means pursuant to this subsection, the insurer for the
11 health benefit plan must:

12 a. provide the party with a clear and conspicuous
13 statement informing the person of all of the
14 following:

15 (1) the types of notices and documents that may
16 be delivered to the covered person by
17 electronic means,

18 (2) the right of the party to withdraw consent
19 to have a notice or document delivered by
20 electronic means at any time without charge,

21 (3) the procedures the party must follow to
22 withdraw consent to have a notice or
23 document delivered by electronic means and
24

1 to update the person's electronic mail
2 address, and

3 (4) the right of the party to have any notice or
4 document delivered, upon request, in paper
5 form free of charge,

6 b. provide the party an opportunity to opt out of
7 delivery by electronic means,

8 c. document that the applicable provisions of the
9 conditions under the Uniform Electronic Transactions
10 Act, found at Section 15-101 et seq. of Title 12A of
11 the Oklahoma Statutes, are satisfied, and

12 d. satisfy the other requirements of this subsection.

13 4. When a notice or document is provided electronically to a
14 party pursuant to this subsection, an insurer shall apprise the
15 party of the significance of the notice or document when it is not
16 otherwise reasonably evident and of the right to request and obtain
17 a paper version of such notice or document.

18 F. This section does not affect requirements related to content
19 or timing of any notice or document required under applicable law.

20 ~~F.~~ G. If a provision of this title or applicable law requiring
21 a notice or document to be provided to a party expressly requires
22 verification or acknowledgment of receipt of the notice or document,
23 the notice or document may be delivered by electronic means only if

1 the method used provides for verification or acknowledgment of
2 receipt.

3 ~~G.~~ H. The legal effectiveness, validity or enforceability of
4 any contract or policy of insurance executed by a party may not be
5 denied solely because of the failure to obtain electronic consent or
6 confirmation of consent of the party in accordance with subparagraph
7 b of paragraph 3 of subsection D of this section.

8 ~~H.~~ I. 1. A withdrawal of consent by a party does not affect
9 the legal effectiveness, validity or enforceability of a notice or
10 document delivered by electronic means to the party before the
11 withdrawal of consent is effective.

12 2. A withdrawal of consent by a party is effective within a
13 reasonable period of time after receipt of the withdrawal by the
14 insurer.

15 3. Failure by an insurer to comply with paragraph 5 of
16 subsection D and subsection J of this section may be treated, at the
17 election of the party, as a withdrawal of consent for purposes of
18 this section.

19 ~~I.~~ J. This section does not apply to a notice or document
20 delivered by an insurer in an electronic form before the effective
21 date of this act to a party who, before that date, has consented to
22 receive notice or document in an electronic form otherwise allowed
23 by law.

1 ~~J.~~ K. If the consent of a party to receive certain notices or
2 documents in an electronic form is on file with an insurer before
3 the effective date of this act, and pursuant to this section, an
4 insurer intends to deliver additional notices or documents to such
5 party in an electronic form, then prior to delivering such
6 additional notices or documents electronically, the insurer shall:

7 1. Provide the party with a statement that describes:

8 a. the notices or documents that shall be delivered by
9 electronic means under this section that were not
10 previously delivered electronically, and

11 b. the party's right to withdraw consent to have notices
12 or documents delivered by electronic means, without
13 the imposition of any condition or consequence that
14 was not disclosed at the time of initial consent; and

15 2. Comply with paragraph 2 of subsection D of this section.

16 ~~K.~~ L. An insurer shall deliver a notice or document by any
17 other delivery method permitted by law other than electronic means
18 if:

19 1. The insurer attempts to deliver the notice or document by
20 electronic means and has a reasonable basis for believing that the
21 notice or document has not been received by the party; or

22 2. The insurer becomes aware that the electronic mail address
23 provided by the party is no longer valid.

1 ~~H.~~ M. A producer shall not be subject to civil liability for
2 any harm or injury that occurs as a result of a party's election to
3 receive any notice or document by electronic means or by an
4 insurer's failure to deliver a notice or document by electronic
5 means.

6 ~~M.~~ N. This section may not be construed to modify, limit or
7 supersede the provisions of the federal Electronic Signatures in
8 Global and National Commerce Act, Public Law 106-229, as amended.

9 SECTION 2. This act shall become effective November 1, 2024.

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11 COMMITTEE REPORT BY: COMMITTEE ON INSURANCE, dated 02/21/2024 - DO
12 PASS, As Amended and Coauthored.